



October 1, 1999

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
Box 850137
Mesquite, Texas 75185-0137

OR99-2792

Dear Ms Graham:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 129277.

The City of Mesquite (the "city") received a request for records relating to the arrest of a particular individual. You contend that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law right to privacy and section 261.201 of the Family Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common-law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). A request for unspecified records in which a particular individual is identified as a "suspect" is, in essence, a request for the individual's criminal history. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See Open Records Decision Nos. 616 (1993), 565 (1990)*. Thus, criminal history compilations are excepted from disclosure under section 552.101 in conjunction with the common-law right to privacy. In this case, however, the requestor is seeking information about one arrest, not a criminal history compilation. Therefore, the request does not implicate the common-law right to privacy.

Most of the requested information, is, however, excepted from disclosure under section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

The offense report and supporting documents relate to a case of indecency with a child. Thus, these documents are within the scope of section 261.201. We assume that the city has not adopted a rule that governs the release of this type of information. Given that assumption, the city must withhold the offense report and supporting documents from disclosure under section 552.101 as information deemed confidential by section 261.201. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Finally, you ask whether the documents in exhibit 2 must be released to the requestor. The documents in exhibit 2 are public by statute and, therefore, must be provided to the requestor. *See* Code Crim. Proc. art. 62.08; Open Records Decision No. 525 (1989) (Public Information Act's exceptions to disclosure do not apply to information which is public by statute).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen Hattaway".

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 129277

Encl. Submitted documents

cc: Ms. Kathryn Flack
222 North Montclair
Dallas, Texas 75208
(w/o enclosures)